



DEPARTMENT OF COMMERCE

International Trade Administration

[C-821-825]

Phosphate Fertilizers from the Russian Federation: Notice of Court Decision Not in Harmony with the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination and Amended Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of
Commerce.

SUMMARY: On January 19, 2024, the U.S. Court of International Trade (CIT) issued its final
judgment in *The Mosaic Company v. United States*, Consol. Court No. 21-00117, sustaining the
U.S. Department of Commerce's (Commerce) remand redetermination pertaining to the
countervailing duty (CVD) investigation of phosphate fertilizers from the Russian Federation
(Russia) covering the period of investigation, January 1, 2019, through December 31, 2019.

Commerce is notifying the public that the CIT's final judgment is not in harmony with
Commerce's final determination in that investigation, and that Commerce is amending the final
determination and the resulting CVD order with respect to the countervailable subsidy rates
assigned to Industrial Group Phosphorite LLC (EuroChem), Joint Stock Company Apatit (JSC
Apatit), and all others.

DATES: Applicable January 29, 2024.

FOR FURTHER INFORMATION CONTACT: Shane Subler or William Horn, AD/CVD
Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S.
Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone:
(202) 482-6241 or (202) 482-4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2021, Commerce published its final determination in the CVD investigation of phosphate fertilizers from Russia.¹ Commerce calculated countervailable subsidy rates of 47.05 percent for EuroChem, 9.19 percent for JSC Apatit, and 17.20 percent for all other producers/exporters of phosphate fertilizers in Russia.² Commerce subsequently published the CVD order on phosphate fertilizers from Russia.³

JSC Apatit, EuroChem, and the petitioner⁴ appealed Commerce's *Final Determination*. On September 2, 2022, the CIT remanded the *Final Determination* to Commerce, directing Commerce to: (1) adjust the final total sales calculation for EuroChem to the proper figures and explain the calculation; (2) either remove the added value-added tax (VAT) and import duties from the natural gas benchmark price or offer further explanation for why, when tier one and tier two benchmark prices are rejected, it was reasonable to add additional VAT and import duties; and (3) either explain why Commerce was unable to countervail recurring subsidies from mining licenses granted by the Government of Russia (GOR) prior to Russia's designation as a market economy on April 1, 2002, or abandon the cut-off date methodology.⁵

In the *First Remand Results*, issued in December 2022, Commerce adjusted the final total sales calculation to the proper figures and explained the calculation further, removed the added VAT and import duties from the natural gas benchmark price, and revised the subsidy calculation for the Provision of Mining Rights for Less Than Adequate Remuneration (LTAR) program by countervailing recurring subsidies from mining licenses granted by the GOR prior to

¹ See *Phosphate Fertilizers from the Russian Federation: Final Affirmative Countervailing Duty Determination*, 86 FR 9479 (February 16, 2021) (*Final Determination*), and accompanying Issues and Decision Memorandum.

² *Id.*, 86 FR at 9480.

³ See *Phosphate Fertilizers from the Kingdom of Morocco and the Russian Federation: Countervailing Duty Orders*, 86 FR 18037 (April 7, 2021) (*Order*).

⁴ The petitioner is The Mosaic Company.

⁵ See *The Mosaic Company, et al v. United States*, Consol. Court No. 21-00117, Slip Op. 22-103 (CIT September 2, 2022) (*First Remand Order*), at 33-34, 39, and 41.

Russia's designation as a market economy on April 1, 2002.⁶ Consequently, Commerce made changes to EuroChem's and JSC Apatit's final subsidy rates from the investigation, as well as the all-others rate.⁷

In its *Second Remand Order*, issued on July 11, 2023, the CIT remanded certain aspects of Commerce's *First Remand Results* for further explanation or reconsideration.⁸ Specifically, the CIT directed Commerce to: (1) explain why reconciling phosphate rock cost information to the financial statements of JSC Apatit's parent company, PhosAgro PJSC, was sufficient, or seek further information from JSC Apatit; (2) explain why it found a submission by EuroChem to be supported, and respond to the petitioner's specific objections regarding this submission; and (3) explain the selection of profit before tax in the benefit calculation for the GOR's provision of mining rights.⁹

On October 11, 2023, Commerce issued the *Second Remand Results*.¹⁰ In the *Second Remand Results*, Commerce: (1) explained how JSC Apatit reconciled its phosphate rock cost information to its financial statements in a submission filed after the *First Remand Results*; (2) explained how a translated submission by EuroChem after the *First Remand Results* supported the cost reconciliations that it previously provided; and (3) explained why the use of profit before tax in the benefit calculation for the Provision of Mining Rights for LTAR program was appropriate.¹¹ Based on this analysis, Commerce made no changes to the subsidy rates

⁶ See *Final Results of Redetermination Pursuant to Court Remand, The Mosaic Company, Phosagro PJSC, JSC Apatit, Industrial Group Phosphorite LLC v. United States, The Mosaic Company, Phosagro PSJC, JSC Apatit, Industrial Group Phosphorite LLC*, Consol. Court No. 21-00117 (CIT September 2, 2022), dated December 16, 2022 (*First Remand Results*), available at <https://access.trade.gov/resources/remands/22-103.pdf>.

⁷ *Id.* at 33.

⁸ See *The Mosaic Company v. United States*, Consol. Court No. 21-00117, Slip Op. 23-99 (CIT July 11, 2023) (*Second Remand Order*).

⁹ See *Second Remand Order* at 16-20.

¹⁰ See *Final Results of Redetermination Pursuant to Court Remand, The Mosaic Company, Phosagro PJSC, JSC Apatit, Industrial Group Phosphorite LLC v. United States, The Mosaic Company, Phosagro PSJC, JSC Apatit, Industrial Group Phosphorite LLC*, Consol. Court No. 21-00117 (CIT July 11, 2023), dated October 11, 2023 (*Second Remand Results*), available at <https://access.trade.gov/resources/remands/23-99.pdf>.

¹¹ See, generally, *id.*

calculated for EuroChem, JSC Apatit, and all others in the *First Remand Results*.¹² On January 19, 2024, the CIT sustained Commerce’s *Second Remand Results*.¹³

Timken Notice

In its decision in *Timken*,¹⁴ as clarified by *Diamond Sawblades*,¹⁵ the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s January 19, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce’s *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court judgment, Commerce is amending its *Final Determination* with respect to EuroChem, JSC Apatit, and all others as follows:

Company	Subsidy Rate¹⁶ (percent <i>ad valorem</i>)
EuroChem ¹⁷	23.77
JSC Apatit ¹⁸	14.30
All Others	16.30

Amended CVD Order

Because there is now a final court decision, Commerce is amending its *Final Determination* and *Order*. As a result of this amended final determination, Commerce is hereby

¹² *Id.* at 31.

¹³ See *The Mosaic Company v. United States*, Consol. Court No. 21-00117, Slip Op. 24-04 (CIT January 19, 2024).

¹⁴ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁵ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁶ See *First Remand Results* at 33.

¹⁷ Commerce found the following companies to be cross-owned with EuroChem in the *Final Determination*: Mineral and Chemical Company EuroChem, JSC; NAK Azot, JSC; EuroChem Northwest, JSC; Joint Stock Company Kovdorksy GOK; EuroChem-Energo, LLC; EuroChem-Usolsky Potash Complex, LLC; EuroChem-BMU, LLC; JSC Nevinnomyssky Azot; and EuroChem Trading Rus, LLC. See *Final Determination*, 87 FR at 9480.

¹⁸ Commerce found the following companies to be cross-owned with JSC Apatit in the *Final Determination*: PhosAgro PJSC; PhosAgro-Belgorod LLC; PhosAgro-Don LLC; PhosAgro-Kuban LLC; PhosAgro-Kursk LLC;

updating JSC Apatit's and EuroChem's *ad valorem* subsidy rates. Additionally, because the all-others rate was based on JSC Apatit's and EuroChem's rates, Commerce is also updating the all-others rate.

Cash Deposit Requirements

For EuroChem and all others, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). For JSC Apatit, however, the cash deposit rate has been superseded by the cash deposit rate calculated in the subsequent administrative review of the CVD order on phosphate fertilizers from Russia.¹⁹ Thus, we are not implementing an amended cash deposit rate for JSC Apatit. This notice will not affect the current cash deposit rate for JSC Apatit.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by JSC Apatit and certain cross-owned companies²⁰ that were entered, or withdrawn from warehouse, during the period November 30, 2020, through December 31, 2021. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: January 23, 2024.

PhosAgro-Lipetsk LLC; PhosAgro-Orel LLC; PhosAgro-Stavropol LLC; PhosAgro-Volga LLC; PhosAgro-SeveroZapad LLC; PhosAgro-Tambov LLC; and Martynovsk AgrokhimSnab LLC. *See Final Determination*, 87 FR at 9480.

¹⁹ *See Phosphate Fertilizers from the Russian Federation: Final Results of Countervailing Duty Administrative Review; 2020-2021*, 88 FR 76182 (November 6, 2023).

²⁰ These cross-owned companies are PhosAgro Public Joint Stock Company; Limited Liability Company PhosAgro-Region; Limited Liability Company PhosAgro-Belgorod; Limited Liability Company PhosAgro-Don; Limited Liability Company PhosAgro-Kuban; Limited Liability Company PhosAgro-Lipetsk; Limited Liability Company PhosAgro-Kursk; Limited Liability Company PhosAgro-Orel; Limited Liability Company PhosAgro-Stavropol; Limited Liability Company PhosAgro-Volga; Limited Liability Company PhosAgro-SeveroZapad; Limited Liability Company PhosAgro-Tambov; and Limited Liability Company PhosAgro-Sibir.

Abdelali Elouaradia,
Deputy Assistant Secretary
for Enforcement and Compliance.

[FR Doc. 2024-01713 Filed: 1/26/2024 8:45 am; Publication Date: 1/29/2024]